HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.267 of 2007

Between:

The Chief Engineer, N.S. Project,
Hill Colony, Nagarjuna Sagar,
Nalgonda District and two others

... Appellant

And

M. Nageswara Rao and 52 others

... Respondents

::JUDGMENT::

Counsel for the appellants : Shri A. Satya Prasad, Special Government Pleader

Counsel for the respondents : Shri V. Mallik

April 23, 2007

Per G.S. Singhvi, C.J.

Feeling aggrieved by interlocutory order dated 13.02.2007 pass the learned Single Judge in W.V.M.P.No.2627 of 2006 in W.P.M.P.No.3 of 2006 (Writ Petition No. 25323 of 2006), Chief Engineer, N.S. Projec Colony, Nagarjuna Sagar, Nalgonda District and two others have file appeal under Clause 15 of the Letters Patent and prayed that the dire given by the learned Single Judge for deposit of 50% of the wages aw by Presiding Officer, Labour Court-III, Hyderabad in M.P.No.6 of 2006 be set aside.

A perusal of the record shows that in compliance of the dire given by the Hon'ble Supreme Court of India in Special Leave Petitic No. 16189 of 1990, Labour Court-III, Hyderabad entertained the di raised by the respondents in the matter of their absorption in the pr undertaken by the appellants. The same was registered as I.D.No.3

1991 (re-numbered as I.D.No.349 of 1993). By an award dated 01.09. the Labour Court ordained as under:

> " The petitioners/workers covered by W.P.No.657/87 and S.L.P.(C) No.16189/90 of Supreme Court are deemed to be in continuation of service as 'Casual Labourers' by virtue of Supreme Court's order Dt.25.08.1987 and that by virtue of Ex.W2 order Dated 01.09.1987, they are deemed to be in employment in N.S.D. Division, Miryalaguda (Nalgonda Dsitrict) and the respondents are directed to maintain status-quo-ante prior to 31.10.1987 as if the petitioners have not been relieved in N.S.C. Miryalaguda Division, Nalgonda District and consequently shall issue necessary orders of posting at the same place by entrusting the suitable job as "Casual Labourers". Payment of wages will commence from the date of their joining in N.S.C. Division, Miryalaguda (Nalgonda District). Since the petitioners joined in the N.S.C. Division, Miryalaguda (Nalgonda District) as on 01.09.1987 and that they were wrongfully transferred relieving them on 31.10.1987, they are entitled for the back wages from 01.11.1987 till the date of the award at the rate of 1/5th of the last drawn wage. The principle of "No work and No pay" for the period 01.11.1987 till the date of award (1.9.93) cannot be strictly applies as the workers were not at fault. The Award shall be published by the Government of Andhra Pradesh as provided under Section 17 of I.D. Act, 1947 and on publication of the award the concerned respondents shall issue necessary orders to the petitioners, not later than 30 days of publication of the award the petitioners shall make representation to the respondents as to their willingness to work as casual labourers in the N.S.C. Sub-Division of Miryalaguda (Nalgonda District.)"

Writ Petition No.10045 of 1998 filed by the appellants for quashir abovementioned award was dismissed by the learned Single Judge c Court on 29.08.2003. He held that the award does not suffer fron jurisdictional infirmity or error of law apparent on the face of the recor that failure of the appellants to provide work to the members of respo federation was totally unjustified.

The appellants challenged the order of the learned Single Juc Writ Appeal No.393 of 2004, which is pending adjudication. They alsc

W.A.M.P.No.761 of 2004 which was disposed of by the Division Ben
15.03.2004 in the following terms:

> " Heard learned counsel for the parties in the interest of justice without prejudice to the rights of the parties, we pass the following order:
>
> That if the respondents desire to join the work, they shall be offered work and shall be engaged by the Writ Petitioners and for the period of actual engagement, they shall be paid minimum wages as prescribed under Minimum Wages Act.
>
> The order of Learned Single Judge, dt.29.08.2003 shall remain stayed.
>
> The amount deposited earlier with the labour court in I.D.No.349/93 may not be withdrawn, but this Appeal shall come up for final hearing positively in the third week of June, 2004."

In furtherance of the order passed by the Division Bench respondents claim to have approached the concerned officers for pro work but without success. Representations made by them for gra minimum wages also did not yield any result. Therefore, they file application under Section 33-C (2) of the Industrial Disputes Act, 194 short, 'the Act') for payment of Rs.31,55,451/- towards minimum wages same was registered as M.P.No.6 of 2006.

By a detailed order dated 14.09.2006, Presiding Officer, Labour C III, Hyderabad accepted the application of the respondents and directe appellants to pay Rs.31,55,231/- as arrears under the Minimum Wages

The appellants challenged the abovementioned order in Writ Pe No.25323 of 2006, which is pending before the learned Single Judge. also filed W.P.M.P.No.32421 of 2006 for stay of the proceedings in M.P of 2006. On 08.12.2006, the learned Single Judge passed an ex interim order, which reads as under:

> " Interim suspension. Notice."

On receipt of the notice issued by this Court, the respondents W.V.M.P.No.2627 of 2006 for vacating the ad interim order. learned Single Judge disposed of the vacate petition by recordin following order:

> " The writ petition is directed against order made in M.P.No. 6 of 2006 dated 14.09.2006 on the file

of the Labour Court-III, Hyderabad.

The respondents-workmen laid a claim under Section 33-C (2) read with Section 33-C(5) of the Industrial Disputes Act, 1947 seeking to determine the arrears of wages payable in pursuance of the orders passed in WAMP No.761 of 2004 in WA No.393 of 2004 on the file of this Court.

The relevant portion of the said order reads as follows:

> "That if the respondents desire to join the work, they shall be offered work and shall be engaged by the Writ Petitioners and for the period of actual engagement, they shall be paid minimum wages as prescribed under Minimum Wages Act."

Before going further, it is necessary to notice that earlier, the respondents-workmen raised a dispute in I.D.No.349 of 1993 and the same was answered in their favour. Aggrieved by the same, the writ petitioners have filed W.P.No.10045 of 1998 which was dismissed on 29.08.2003. Challenging the same, W.A.No.393 of 2004 was filed along with the stay petition in WAMP No.761 of 2004. In pursuance of the order passed in WAMP No.761 of 2004, the respondents-workmen seem to have approached the Management several times but they were not provided with any employment.

The order passed in I.D. read with order passed in writ petition and WAMP would indicate that there is no stay of reinstatement of the respondents. On the other hand, as and when the respondents-workmen approached the petitioners-management they shall be engaged and paid wages. Though the respondents-workmen approached the petitioners-Management, they were not engaged.

Under these circumstances, the Labour Court, after detailed consideration of the matter in the petition filed under Section 33-C (2) read with Section 33-C(5) of the Act, came to a conclusion that the respondents-workmen are entitled for certain amounts as determined. Aggrieved by the same, the present writ petition is filed.

While admitting the writ petition, this Court granted interim suspension of the proceedings in M.P.No.6 of 2006 dated 14.09.2006 passed by the learned Presiding Officer, Labour Court-III, Hyderabad. Now a vacate stay petition is filed by the respondents-

workmen.

In the facts and circumstances of the case, the petitioners in the light of the orders passed in WAMP No.761 of 2004 would not have denied employment to the respondents-workmen for engaging them on daily wages etc. These facts have been taken into consideration by the Tribunal while passing the order.

In fact, the Government also issued G.O. in pursuance of the interim orders dated 15.3.2004 passed in WAMP No. 761 of 2004 which has concurrence of the Finance Department.

Under these circumstances, I deem it appropriate, while maintaining the interim order, to direct the petitioner to deposit 50% of the wages awarded by the Tribunal within a period of eight weeks from today, in default, the stay granted on 08.12.2006 and modified today shall stand vacated automatically without further reference to the Court."

We have heard Shri A. Satya Prasad, learned Special Govern Pleader and Shri V. Mallik, learned counsel for the respondents scanned the record.

At this stage, we do not want to express any opinion o merits/demerits of order dated 14.09.2006 passed by the Presiding C Labour Court-III, Hyderabad in M.P.No.6 of 2006 because the writ pe filed by the appellants is pending adjudication before the learned S Judge. Any observation by us may prejudice the cause of either o parties. However, prima facie, there appears some substance i grievance of the respondents that despite the direction given by the Di Bench in W.A.M.P. No.761 of 2004 and their willingness to work i projects undertaken by the appellants, the latter did not provide them jo did not pay them minimum wages.

A careful reading of order dated 15.03.2004 passe W.A.M.P.No.761 of 2004 (Writ Appeal No.393 of 2004) shows tha Division Bench had not stayed award dated 01.09.1993 passed b Presiding Officer, Labour Court-III, Hyderabad in I.D.No.349 of 1 Therefore, the appellants were duty-bound to take the respondents or or pay them wages in accordance with the provisions of the Minimum W Act. This is precisely what the learned Presiding Officer of the Labour

did while disposing of M.P.No.6 of 2006. Therefore, the direction giv the learned Single Judge to the appellants to deposit 50% of the w awarded by the learned Presiding Officer cannot be termed as arbitra unjust warranting interference by the Division Bench more so becaus respondents have not been permitted to withdraw the amount deposited by the appellants.

In the result, the appeal is dismissed.

As a sequel to dismissal of the main appeal, W.A.M.P.No.504 of filed by the appellants for suspending the operation of order passed b learned Single Judge is also dismissed.

G.S. SINGH

C.V. NAGARJUNA RED

April 23, 2007
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